IN THE HIGH COURT OF UTTARANCHAL At NAINITAL

Second Appeal No. 71 of 2003

Dev Dutt Mishra S/o Bhagwat Datt Mishra,
R/o Laxman Jhoola, Rishikesh,
District, Pauri Garhwal. ... Appellant.

Versus

1. Sri Vishveshwar nath Ji Trust,
   Laxman Jhoola, Rishikesh, Pauri Garhwal,
2. Smt. Maharaj Kumari Umeshwari Kunwar,
   W.o Sri Kunwar Bahadur Raghwansh Mani,
   R/o Laxman Jhoola, Rishikesh, Pauri Garhwal,
3. Jagdamba Mishra S/o Bhagwat Mishra,
   R/o Opposite at the Hanuman Mandir,
   Hajaribag, Bihar, ... Respondents

.....

Hon'ble P.C.Verma, J.

This appeal has been field by the appellant challenging the judgment and decree dated 31.05.2003 passed by the Additional District Judge/F.T.C., Pauri Garhwal in Appeal No. 5 of 1997, whereby the learned appellate court dismissed the appeal of the petitioner.

Brief facts giving rise to the present Second Appeal are that Original Suit No. 40 of 1991 was instituted by respondents for eviction of the petitioner as priest of the temple. The petitioners' father was appointed priest by the trust. The registered trust was constituted for the proper management of the temple. The trust reserves its rights to dismiss or appoint any employee. On account of theft in the temple, the services of the petitioner have been terminated by a notice dated 11.12.1990. The petitioner has contested the suit. In his written statement he denied the allegations made against him, but accepted the functioning and establishment of the trust. After

framing of issues, oral and documentary evidence of the parties was adduced by the trial court. And after hearing of learned counsel for both the parties, the trial court decreed the suit evicting the petitioner from the premises of the temple. Aggrieved by the judgment and decree, the petitioner filed the appeal no. 5 of 1997, challenging the order of the trial court.

Heard Sri J.P. Joshi, learned counsel for the appellant and Sri L.P. Naithani, learned senior counsel and Sri S. Dhulia, learned counsel for the respondent No. 2 & 3 at length and perused the orders impugned.

The trial court found that the suit is maintainable in accordance with the Trust Act. It was also held by the trial court as well as the appellate court that the suit was not liable to be dismissed for non-joinder of parties.

Learned counsel for the appellant argued that the suit was barred by Sections 47 & 48 of the Trust Act. But the application of Trust Act is barred by Section-1 of the Indian Trust Act. Section-1 of the Indian Trust Act itself provides that it will not apply to public or private religious or charitable endowments. Therefore, Sections 47 & 48 of the Indian trust Act are not attracted in the present appeal. The argument advanced by learned counsel for the appellant is misconceived. The learned trial court and the appellate court have rightly held that the suit was maintainable. It was also held that the suit was not barred by non-joinder of parties. I am in full agreement with the findings recorded by the trial court as well as appellate court.

Thus, the substantial questions of law framed, do not arise for determination. These questions have been decided on finding of fact recorded by the trial court as well s appellate court. Both the courts have given

finding against the appellant. I do not find any force in this second appeal.

Learned counsel for the appellant has cited judgment in the case of Atmaram Ranchhodbhai Vs. Gulam Husain Gulam Mohiyaddin and others, reported in AIR 1973 Gujarat 113 (v-60-c-17) Full Bench. In the facts and issues decided in the instant case, the ratio of the aforesaid judgment is attracted.

Accordingly, the second appeal is dismissed. No order as to costs.

(P.C. Verma, J.)

December 5,2003:
NCM: